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SOME REMARKS ON THE PENNSYLVANIA SIDE REPORTS

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First Paper

PRELIMINARY

Before entering upon the consideration of the Side Reports of Pennsylvania, three books may be mentioned which stand apart from all the others. One is entitled:

Pennsylvania Colonial Cases: The administration of Law in Pennsylvania prior to A. D. 1700 as shown in the cases decided and in the Court proceedings. By Hon. Samuel W. Pennypacker, LL. D. An address before the Law Academy of Philadelphia, on the evening of October 21, 1891. Philadelphia: 1892.

Under the Frame of Government, the Provincial Council consisted of eighteen persons, "men of most note for their virtue, wisdom and ability." There were practically no lawyers in the Colony, and the judges both in the Council and the county courts were merchants or other laymen whose good characters and judgments commended themselves. The volume contains, therefore, little of legal study; yet appreciation of legal principles is frequently to be found. In the very first case, which was apparently an action of ejectment brought in Philadelphia, for lands in Bucks County, heard before the Council in 1683, the Court in their opinion say: "Yea law saith that all causes shall be first Tryed where they arise. It is the opinion of this Board that ye apeal Lyes not Legally nor regularly before us, and therefore doe refer ye Business to the proper County Court and doe fine ye Court of Philadelphia for giving ye said Judgment against Law."

"In effect," says Gov. Pennypacker, "the appeal was quashed." He adds: "It is only necessary to add that the race of judges who held that a fine should be imposed upon the Court for giving judgment against the law soon perished, no successors arose who accepted this view, and the principle failed to become established as a part of our jurisprudence. Had it been otherwise, when vacancies occur upon the Bench, there would be fewer lawyers, I ween, willing to fill them."

The third case likewise was decided in July 1683. Complaint of passengers was made against the Master of the ship "Levee of Liverpool." Because a passenger had left open a hogshead of water, the Captain kicked the passenger, and ran his fingers up the passenger's nose. Other lively doings of the Master were complained of. We hope that librarians who cross the ocean this summer will not suffer from being compelled to swash the deck, nor to take extra casks of beer in order that the crew will leave some for themselves, nor that they will feel the Captain's fingers.

The author says, in conclusion:

"The cases, which you have now had the opportunity of reviewing, show that the law in that early time was administered in Pennsylvania with a con-

siderable measure of technical skill, and what is of far more importance, that an enlighted spirit of justice and fairness controlled both the findings of juries and the decisions of Judges. Women who had been maltreated, servants who had been abused by their masters, and poor creatures endangered by the credulous superstition of the age appear to have gone into those primitive courts with a faith, justified by event, that neither prejudice, interest nor fanaticism would be thrown into the scale against them. Gross crimes did not occur and ferocious punishments were never inflicted."

Another volume is Judgments in the Admiralty of Pennsylvania by Francis Hopkinson. This was published in 1789 in Philadelphia by J. Dobson and T. Lang. Kirby's Connecticut Reports likewise was published in 1789. These two seem to have been the first volumes of reports ever published in America. Hopkinson's Admiralty Judgments has a double interest. The author belonged to a family of stirling patriotism. He was a Signer of the Declaration of Independence, and the writer of the famous "Battle of the Kegs." His son Joseph wrote "Hail Columbia."

The original edition of Hopkinson's Judgments contained seven decisions, six of which were reprinted in the appendix to Bee's Reports. In 1792, these were reprinted with others in vol. 3 of Miscellaneous Essays, &c.; the latter work containing 49 cases before Judge Hopkinson, decided 1779-1791. Of these 49, 19 are in Bee's Appendix. The cases are reported in terse manner, yet with such clearness that the legal principles involved are readily understood. Some of the decisions are by juries, whom the judges frequently could only advise, under the peculiar system then prevalent in Pennsylvania.

The third work is that of Addison, published first at Washington, Pa., in 1800. This is a volume of much historical interest. It contains charges of Judge Addison to Grand Juries, during the excitements attending the Alien and Sedition laws, and over the Federal tax on Whiskey. Addison contains four cases in the High Court of Errors, the highest court at that time. These are not reported, for that Court, excepting in Addison. One of them contains a valuable study of the law of wreck, as it affects coins shipped aboard the vessel. No Supreme Court Cases are in Addison. The County Court cases presented are very briefly reported, as a general thing. It is a striking testimony to the reputation of Judge Addison that from his judgments "there never was an appeal."

Our Subject.

The side reports of Pennsylvania may be defined as those which are not reported by the State Reporter. They are of several classes:

1. Those reporting Supreme Court Cases and no others.
2. Those reporting both Supreme Court and County Cases.
3. Those reporting County Cases.

Those of the first class, confined to Supreme Court cases are:

Grant 1852-1863, 3 vols. Published in 1859, 1861, 1864.

Pennypacker 1881-1884, 4 vols. Published in 1882, 1884, 1885, 1886.

Monaghan 1888-1889, 2 vols. Published in 1890-1891.

Walker 1877-1885, 4 vols. Published in 1889-1890, 1892, 1901.

A few stray cases run back as far as 1853.

Sadler 1885-1889 (and Digest) 11 vols.

Grant contains in addition a case of 1814, and one of 1849. Until 1845, the work of reporting the decisions of the Supreme Court was an independent undertaking. Nevertheless, certain reports before that year were by men connected so intimately with the court that their volumes have been accepted by the profession as equivalent to official reports. These are Dallas, Yeates, Binney, Sergeant & Rawle, Rawle, Penrose & Watts, Watts, Wharton, Watts & Sergeant.

By Act of April 11, 1845 (P. L. 374), the office of State Reporter was established, and then began the Pennsylvania State Reports, with first Barr. The Act contained two unwise limitations.

The Reporter was required to publish all of the opinions endorsed by the Court as of sufficient importance for publication, and such of the others as he shall deem necessary and important for publication, so that the same shall be annually contained in two volumes, if so many shall be necessary. The act provides that no minority opinions shall be published by said reporter, but in 1868, by act of March 3 (P. L. 46), the reporter was authorized to publish minority opinions on all constitutional questions. The Act of June 12, 1878 (P. L. 201) provided that the reporter shall report and prepare such of its decisions as the court may designate, requiring him first to submit the syllabus of every case reported by him to the judge who delivered the opinion, for correction or approval.

The restriction by the Act of 1845 creating the office of State Reporter, confining the publication to two volumes per annum, placed it beyond the power of the State Reporter to report all the decisions. "Many cases therefore were by force omitted, which were of great importance." Benjamin Grant, of Erie, published three volumes of these. Nearly all the opinions reported in volume 1 of Grant, also nearly all in volume 2, had been marked by the Judges for report, but for the reason stated were not in the regular series. In volume 3 is a full report of the Conscription Cases during the Civil War. The preface to volume 1 states that in the reports of cases several years old the reporter sometimes was embarrassed by the fact that the only papers to be found were the opinions of the Court; and that in these cases he was obliged to omit names of counsel, statement of facts, or brief of argument of counsel.

The Act of 1878 deprived the State Reporter of the descretion which he had enjoyed under the Act of 1845 of reporting cases in addition to those marked by the judges as important for publication. Many of these were afterwards seen to possess features of general interest. Four volumes of these, of cases decided during the period 1881-1884, were collected and published in the volumes of Samuel W. Pennypacker. Three years after the publication of volume 4, that reporter took his seat on the bench of Common Pleas No. 2 of Philadelphia, and this period of fourteen years on the bench brought him distinction for his ability.

The omitted cases of 1888-1889 were nearly all reported by Monaghan, who two or three years later became State Reporter.

Volume 1 of Monaghan came out in weekly parts. Besides cases of 1888-89 it reports a few prior ones. The act of March 28, 1889 (requiring the State Reporter to include from that date, in condensed form, all the cases not marked to be reported), caused the discontinuance of Monaghan with volume 2.

Walker's four volumes gathered from much the same period as did Pennypacker; for while Walker has a few cases as early as in the fifties, (the earliest in 1853,) the main current begins in the later seventies, and continues to 1885.

The preface to volume 2 of Walker states that "this volume contains an appendix of ten cases, two Supreme Court Cases not elsewhere reported, which were originally printed in the fourth volume of the Luzerne Legal Observer; a volume that is without doubt the rarest Pennsylvania Law Book. None of the Public Libraries possess a perfect copy. Some of the cases in the appendix were obtained from the copy in the Library of the Philadelphia Law Association; and the others from the original records. A table of cases of the 4th. Luzerne Legal Observer is appended at page 8 of this book, showing where the other cases may be found, thus supplying the want of the volume. A number of cases in this volume were marked to be reported in the State Reports, but by some accident, were omitted."

Sadler reports those Supreme Court decisions which are not in the regular reports, from October 5th 1885, to March 1889, except those found in Monaghan.

The purpose of Sadler is thus explained:

The legal profession had convenient access to Supreme Court decisions not in the regular reports, through Grant, Pennypacker and Walker. These came down to October 1885. They had convenient access, too, to such cases from October 1888 to March 1889, in the two volumes of Monaghan.

Beginning with September 1, 1885, the Pennsylvania Supreme Court cases were reported by the Lawyers' Co-operative Publishing Co., in the Central Reporter; and beginning with October 14, 1885, they were reported also by the West Publishing Co., in the Atlantic Reporter. These reporters intermingled Pennsylvania decisions with those of other States. This spread them through many volumes, and at an expense much increased. It was thought that by gathering the Pennsylvania cases by themselves, a service would be rendered to those who desired most convenient recourse to the decisions of Pennsylvania. Accordingly, the Pennsylvania cases beginning with October 1885, and running down to March 1889, are all collected together in Sadler, excepting those in the regular State reports and excepting also those in Monaghan.

The cases of the period mentioned, reported in the Weekly Notes of Cases, are also given in Sadler, the idea being that Sadler should be classed with those reports which report Supreme Court cases exclusively; but Sadler's reports are not copies from the Weekly Notes, but are independent.

Thus, to repeat, we have in Pennsylvania, of Class 1, reporting Supreme Court cases and no other, besides the regular reports, the following.

Grant, Pennypacker, Monaghan, Walker, Sadler.

A result of restricting the State Reporter to those cases which at the time of their decision were seen by the judges to be important for publication, caused some of them to be reported in law periodicals of high reputation, like the Weekly Notes of Cases. Carroll vs. Williams, 12 W. N. C. 348, reported also in 2 Pennypacker 159, and afterwards included in Sadler's series, is pre-eminently such a case. It has been cited probably as much as any case in the official series. It is a stop, look, and listen case.

The Supreme Court said, "It is in vain for a man to say that he looked and listened, if in spite of what his eyes and ears must have told him, he walked directly in front of a moving locomotive."

Another case that may be mentioned is Lehigh Valley R. R. vs. Commonwealth, 1 Monaghan 45. This held that transportation of goods from one point in the State to another point in the State although in the haul the goods were transported out of the State and in again, is not interstate but internal commerce for purposes of taxation. This was affirmed in 145 U. S. 192, although in regulation of rates of freight charges the law is different; Hanley vs. Kansas City Southern Ry., 187 U. S., 617, from Arkansas.

As such omissions from the State Reports multiplied, the profession saw the importance of a greater access to the decisions. In answer to this demand, the Act of Mch. 28, 1889, 31 P. L. 22, requiring all cases to be reported, was passed. Since then our side reports are limited to the lower courts; for if they occasionally report a Supreme Court decision it is only for local convenience. The result of the old system, however, was an unusual value of the earlier side reports.

The second class of Side Reports consists of those which report the decisions both of the Supreme and lower courts. The number of these is large.

The third class is those that report only the county decisions, and selected opinions of the State Departments. The second and the third classes have much in common, and a sharp division line between them is not always easy.

Many of the cases reported in the various Pennsylvania journals are also in the State Reports, even of those before the Act of 1889 already mentioned. The labor of ascertaining precisely how many are reported in the regular reports would be great, and no one has ever ascertained the number.

It would be impossible, within the limits at command, to go over the various side reports and law periodicals of Pennsylvania, pointing out the characteristics of every one, with allusions to some of the cases in each; and if in mentioning some, others are omitted, the omission does not imply any want of confidence in journals not especially mentioned. The reports and journals are almost all of excellent repute. Many contain occasional matter of much interest in their reports of bar meetings in memory of judges or lawyers who passed away, and some of the addresses on these occasions are rich in eloquence, and full of inspiration. Matters of news of interest to the profession, reports of committees of the bars, etc., are preserved in many of these journals.

The predecessors of the county law journals of Pennsylvania in some instances combined the features of a magazine for articles of legal character, with those of a reporter of decisions of the courts. The decisions reported were selected cases, and they constituted but a small fraction of the adjudications. These law magazines were conducted by editors of good ability, and they will always command some degree of interest to the historical student. The first of these was the American Law Journal, published in three volumes from 1808 to 1810. This journal has the distinction of being the first law journal published in this country. It was followed by a new series, volumes 4-6, in 1813-17, and in 1821, there was an effort made to revive it in Hall's Journal of Jurisprudence, which was called volume 7. The series cannot be classed among

the side reports of Pennsylvania. The aim of the editor and proprietor was not to publish a Pennsylvania journal, but rather, as the name indicates, an American law magazine. The cases selected were those thought to be of general interest in the country at large, and they were taken from all parts of the United States, and from both Federal and State courts.

In the seven volumes, the Pennsylvania cases number probably twenty-five. Some of these are not to be found elsewhere, and many of them are of interest to this day.

Volume 1 No. 2 contains Commonwealth vs. Naglee, an odd narrative of the illegal seizure by a French captain in 1806 of a Swedish schooner and cargo which were under the care of an American supercargo, and of the latter's revengeful assault in 1808 on the Captain in Philadelphia.

Volume 2 No. 1 contains the curious case of Hippolyte Dumas, in 1807, not elsewhere reported. It is a case of habeas corpus brought by a French naval officer who had been committed to prison in Philadelphia as a deserter from the French navy, to be held until he could be sent to France.

Volume 5 contains Lockington's Case. This case is of interest as illustrating the struggle for supremacy between the Federal and the State Courts. Lockington was a British subject living in Pennsylvania during the war of 1812. He procured a marshall's passport allowing him to live at certain designated places over 40 miles from tidewater. He violated the restriction, and was arrested by the United States Marshal, who found him in Philadelphia. He petitioned the State court for a writ of habeas corpus, which was granted him, although on hearing he was remanded to the custody of the Marshal. The case is also reported in Brightly's Nisi Prius. The United States Supreme Court at a later day held that the State Courts had no authority to discharge persons held by National Officials. See Church on Habeas Corpus, Sec. 84.

In Volume 6 is Commonwealth ex rel. Van Ritter vs. Schultz—habeas corpus. In this case, a passenger had agreed to remain on shipboard until payment of his passage money. On page 129 is a case in the New York Marine Court, wherein suit was brought by a passenger for damages in shaving him and immersing him in a tub of water, for refusal to procure a bottle of cognac or rum as a sacrifice to Neptune.

One chief value of the series is found in the learned papers: Mackintosh's Discourse on the Study of the Law of Nature and Nations. Biographical sketches of Sir James Mackintosh, of Thomas Lord Coventry, of George Wythe, Ld. Ch. J. Hales (Judicial Character of), Sir William Scroggs, Serg. Maynard, Thomas Syderfin.

Opinions of eminent counsel of Philadelphia and elsewhere on the claim of the Batture, situated in front of the suburb, St. Mary, New Orleans.

Rules of the United States Circuit Court for the Maryland district; Report of the Judges of the English Statutes in force in Pennsylvania, reported Dec. 14, 1808. Report of Jared Ingersoll, 1813, relative to the Penal Code.

Discourse on Swearing on the Evangels. Doubtless by Trott, Atty.-General of South Carolina, on Dec. 8, 1709.

A translation of Title 9 Bk. 4 of the Digest (Of the Responsibility of Mariners, Inn and Stable Keepers).

Translation of Il Consolato del Mare. The Judicial Order of Proceedings before the Consular Court (Translated for this Journal).

Translation of the Digest, Book XIV Tit. II, of the Rhodian law concerning Jettison.

Translation of the Law of War by Bynkershek.

Freedom of Neutral Trade, translated from the French by Charles J. Ingersoll.

During this period, Browne's Reports were published, Vol. 1 in 1811 and vol. 2 in 1813. The work is confined to reports of decisions. Vol. 1 reports cases in the Common Pleas of Philadelphia county during 1806-1814, and an appendix contains a few earlier cases, as far back as 1801. Vol. 2 includes the District Court as well as the Common Pleas. Brown is not a work of much importance, excepting as portraying in its degree a record of the times. It was issued originally in numbers, and these became bound in different order in different volumes, and hence the paging in various copies may not be alike.

Samson vs. Kits, in vol. 2, is a case of curious ill luck. Goods were shipped on The Amity, which being stranded on Manasquan Beach on the New Jersey coast, the goods were reshipped on The Bloomfield. This vessel was blown ashore at Cranberry Inlet, and the goods were transferred to The Mantrue. This third vessel ran aground at Barnegat Inlet, New Jersey, in a gale, so the goods, such as remained of them, were reshipped on a fourth vessel, The Packet, which arrived. Suit was brought for non-delivery of the portion lost.

Eighteen years after 2nd. Browne, there issued: Ashmead: Reports of Cases Adjudged in the Courts of Common Pleas, Quarter Sessions, Oyer and Terminer, and Orphans' Court, of the First Judicial District of Pennsylvania: With Notes and References. By John W. Ashmead.

Volume 1. Philadelphia. Towar, J. & D. M. Hogan. Pittsburgh, Hogan & Co. C. Sherman & Co. Printers. 1831. xiv-462.

Volume II Philadelphia: T & J. W. Johnson, Law Booksellers, Successors to Nicklin & Johnson, No. 5 Minor Street, 1841. x-562.

These volumes were reprinted in St. Louis, Missouri, in 1871. Vol. 1 reports many cases that were decided prior to the reporter undertaking the work. It starts with a case begun in 1808. Hence there is an omission of dates of decisions, and of arguments of counsel. The facts too are sometimes imperfectly given. The Reporter went to much trouble, however, in securing accuracy, and in this he was much aided by Judges Hallowell and King.

In volume 2, the facts, arguments, &c., appear. This volume is of interest in that it reports decisions under the act of 1836 conferring extensive equity jurisdiction upon the judges of the district. Judge King has been called the Father of Equity in Pennsylvania, and many of his decisions are in this volume.

Commonwealth vs. Keeper of the Prison, 1 Ashmead 140. This was a proceeding by habeas corpus. The defendants were Friends or Quakers, and were under restraint under the charge of forcible entry upon certain burial grounds. The defendants were discharged. Judge King delivered an elaborate opinion and the case is cited in 1 Wharton on Criminal Law Section 1101 as the leading one on the point that a mere intruder without color of title can be forcibly dispossessed. The prominence of the parties, the eminence of counsel,

and the learning and ability of the opinion of the court, have made this a celebrated and leading case. It is a curious circumstance that in a case of such prominence in the law of forcible entry and detainer, the parties should have been Friends or Quakers. Another oddity in a case on forcible entry and detainer is in Bythe vs. Wright, 2 Ash. 428 (1841), wherein the name of the property involved is THE HARMONY School House, at Chestnut Hill.

Commonwealth vs. Green, 1 Ashm. 289 (1826), was decided by Judge King at Oyer & Terminer, when that Judge had been on the Bench only about a month. It is a celebrated and leading case on the distinction between murder in the first and second degrees, and is cited many times in Wharton on Homicide. The defendant was a drummer at the Navy Yard in Philadelphia. He had trouble with a sergeant and was struck on the head, and placed under arrest; but shortly afterwards, being in the same room with the sergeant, he leaped across the room, seized a gun and shot the sergeant, who afterwards died from the wound. Judge King gave a most careful study to the case.

Newport vs. Cook, 2 Ashm. 332 (1841), decided by King, P. J., Philadelphia Common Pleas, holding that a fund from a grantor in loco parentis, may be used for education of grandchildren, all having equal chance of survivorship, is cited to that effect, with others, by Perry on Trusts.

During the thirties the Commissioners to revise the Civil Procedure of Pennsylvania presented to the Legislature a number of valuable Reports. These Commissioners were men of marked ability and distinction. They submitted valuable and practical comments, with proposed laws. The laws drafted and recommended by them were adopted by the Legislature without much alteration. The keen interest aroused in the profession by these Reports, and the need of scientific reports of the decisions by the Courts under the procedure Acts, led to the publication of several works. One of these was 2nd Ashmead, already mentioned. Another was Miles.

Miles: Reports of Cases determined in the District Court for the City and County of Philadelphia. By John Miles.

Vol. I. Containing Cases from March 1835 to September 1836, with some cases previous to March 1835; and a Digest of the Acts of Assembly, relating to the Court, and of its Rules revised October 1, 1836. Philadelphia. James Kay, Jur. & Brother, 122 Chestnut Street, Pittsburgh: John I. Kay & Co. 1836.

Vol. II. Containing Cases from 1836 to 1841, with the Rules of Court revised February 19, 1842; and Forms of Pleas under the Rules as to Pleading in Particular Actions. Philadelphia: James Kay, Jun. & Brother, 122 Chestnut Street, Pittsburgh: C. H. Kay & Co. 1842.

These volumes report the decisions of Judges Pettit, Stroud & Joel Jones.

These reports were of much importance in their day. The new statutes relative to procedure were comprehensive. "A general and consistent system of practice" under them was a necessity. To this end, these reports doubtless largely contributed. The volumes are arranged in admirable manner, in some respects, but lack table of citations. The cases are mostly on practice.

Okie vs. Spencer, 1 Miles 299 (1836), to the effect that acceptance from a debtor at maturity of his note, of a third person's check payable in six days in

satisfaction if paid, discharges the surety, because action is thereby suspended, said the court, is cited in 1 Brandt on Suretyship (3rd. ed.) 1905 p. 765, as the authority on the point. (Stroud, J. dissented.) Opinion by Jones, J.

Torlade vs. Barrozo, 1 Miles 366 (1830), is one stage of an interesting controversy between a retiring chargé d'affairs of Portugal and his successor, in which the successor sued out a writ of trover. The District Court quashed the writ by reason of privilege enjoyed by a returning minister, and later, the attorney for the plaintiff was prosecuted under the Act of Congress of 1789 Apl. 30, sec. 26, for issuing the writ, (See U. S. vs. Phillips, 7 Peters S. C. Rep. (U. S.) 776,) but the president of the U. S. directed a nolle proseque. Further account of this controversy is given in Moore's International Law Digest, volumes 1 and 4.

Twenty years and more passed away after the termination of Hall's Journal of Jurisprudence, and then two new magazines were established, the one in 1842, the other in 1843. To the one established in 1842 was given the name of The Pennsylvania Law Journal; to the one inaugurated in 1843 was given the name, The American Law Magazine. The latter continued until 1846, but the Pennsylvania Law Journal continued until the end of the year 1848, having absorbed its rival.

The Pennsylvania Law Journal is the lineal ancestor of The American Law Journal, New Series, which ran from 1848 to 1852, when it became the American Law Register, now known as the University of Pennsylvania Law Review.

A proprietor of The Pennsylvania Law Journal originated also The Legal Intelligencer of Philadelphia, of which more will be said in a later paper.

"The publication of the Pennsylvania Law Journal commenced in the year 1842, and was continued as has been stated until the end of the year 1848. It contained reports of a variety of most interesting and important decisions under the Bankrupt Law of 1841, and of cases in the Supreme Court of Pennsylvania, and in the County Courts throughout the State, including the courts of the city and county of Philadelphia. . . . Very many of the adjudications contained in these volmes have been and still are recognized as settling in our own State important points of practice and principles of law. Owing to the great scarcity of these volumes, and their high price," they became "inaccessible to a great portion of the legal profession." The publication known as the Pennsylvania Law Journal Reports, or as Clark's Reports, was therefore issued in five volumes, containing cases from 1842 to 1852, inclusive, originally reported in the Pennsylvania Law Journal and the American Law Journal. In these five volumes of Clark are incorporated all the cases from those journals, of any value, not contained in other reports.

Volume 1 of Clark contains at p. 392 the case of Commonwealth vs. Armstrong, in the Q. S. of Lycoming County in 1842. In it Ellis Lewis, J., required the defendant to give surety to keep the peace in that he had threatened a clergyman for baptizing his child contrary to his positive commands; but in doing so, the court put the cost on the clergyman because he had provoked the wrongful acts complained of, by interfering with the lawful authority of the parent over his child.

Judge Lewis delivered a long opinion, in which he recited scriptural authority and the opinion of men high in the different churches. He received a letter dated October 5, 1842, from Chancellor James Kent, in which the commentator stated that before receiving Judge Lewis's letter he had already noted the case in a blank leaf in a proper place in his Commentaries, as "a just explanation and application of the parental authority." See note to p. 398. If we turn to 2 Kent 203, we will see Chancellor's Kent's note.

In Eckstein's Estate, 1 Clark 224, Judge King delivered an opinion on the question whether a judgment obtained against a lunatic after appointment of a committee of lunacy, should have preference over other debts, holding that it would not. His opinion was praised and commended by the Supreme Court in Wright's Ap., 8 Barr 57 (1848).

Commonwealth vs. Dickinson, 3 Clark 163, was decided in the Quarter sessions of Philadelphia County in 1846. It holds that an indictment for false swearing to an affidavit of defense does not lie until the case in which the affidavit was filed has terminated by final judgment. This is because "the court will not permit a witness to be excluded from the witness box by an intermediate conviction of perjury." This the only American case cited to the point, in 2 Wharton's Criminal Law Sec. 1324 (Ed. of 1896); although in New York it is said to be an objection to propriety, not to jurisdiction. People v. Hayes. 140 N. Y. 484 (1894).

U. S. vs. Harding, 3 Clark 473 (1846), was a case where Judges Grier and Kane, in the U. S. C. C. in Philadelphia declined to sentence several sailors who had been convicted of the capital offense of a murder on the high seas, Judge Randall, the district Judge before whom they had been tried, having died since the conviction and application for sentence. They would not sentence to death men of whose guilt they knew nothing. Instead, they granted a new trial. This case is given prominent mention, with evident approval, in Wharton Criminal Pleading & Practice (9th ed. 1889), at section 486.

In Butler vs. Butler, 4 Clark 284 (1849), the celebrated divorce case before King, P. J., that able judge rendered a learned opinion in which he held that the "reasonable cause" justifying one of two married persons from leaving the other, must be such as would sustain a degree of divorce in favor of that person. This though a Common Pleas case, has become a celebrated and leading case, and is given first place in Bishop on M. & D. vol. 1. Sec. 1753. It is reported also in Parsons.

In re District Court and Mayor's Court of Lancaster, 1849, 4 Clark 315, is an interesting Order of Court relative to unfinished business, wherein the C. P. of Lancaster County expressed their opinion that the Constitutional mandate requiring "adequate compensation" to judges was as imperative as that which prohibited its diminution" during their continuance in office."

In re Account of Hastings, 4 Clark 471 (not dated, but about 1849). This is of interest chiefly as showing conditions that have passed. It was held that a trustee or agent is not liable for loss incurred in receiving payment of debt in the current paper of the country, in this case notes of a State bank.

So as to fugitive slave cases; some apprentices cases; and certain charges to the Grand Juries in respect to riots over religion.

Martin v. Bear, 5 Clark 17, Lancaster Common Pleas. In this case, Lewis, P. J., had occasion to consider the constitutionality of a statute directing the sale of certain trust property and charging the parties who should receive distribution. In doing so, he observed, what is recognized in Cooley's Constitutional Limitations, that courts of original jurisdiction were bound to give their decision on constitutional questions when necessary to the determination of a cause. Judge Lewis gives a striking reason why this is so of necessity, in many cases, and as it is a reason which I do not find in Cooley, it is perhaps well to refer to his decision. He says: "There are so many proceedings in our courts which the legislature has not thought proper to place under the control of the Supreme Court, that the result of this course of judicial action would be in many cases a violation of acknowledged constitutional right, without any remedy whatever, and in all cases a vexatious delay of that justice which courts are enjoined to administer, 'without denial or delay.'" He says that the conceit that such courts have not this right, "belongs to a sickly brood of judicial fancies which are destined to be short lived."

Smith vs. Kramer, 5 Clark 226. S. C. at Nisi Prius (1853). This was a leading case on the question whether evidence of hereditary taint is admissible in a contest respecting the sanity of a testator to corroborate direct testimony, an authority cited in Clevenger on Insanity, and in the recent edition of Wharton on Med. Jur. upon the precise point involved. Back in the Thirties, Chitty, in his work on Medical Jurisprudence had laid it down as "established" that such evidence is inadmissible; and Shelford, more cautious, had said that it seemed so. For this, they referred to the Scotch case of McAdam vs. Walker, but in the House of Lords the point was evaded. Judge Gibson delivered one of his characteristic and able opinions, in which he referred to the conclusions of leading French and English medical men that a disposition to the disease, curable though it seems certainly to be, is frequently transmitted through generations, and said: "Strange that a source of information open to every one else, should be closed to those who are to pass on the fact. I admit that hereditary insanity will not itself make out a case for or against a member of the family; but to say that it may not corroborate what Mr. Chitty calls direct and positive proof, without defining it, staggers all belief." There will probably not be any serious dispute any longer over this. The more recent decisions in courts of last resort seem agreed, and the case in Clark is not recalled in all the new books. Thus it is not in the second edition of Bishop's New Criminal Procedure, nor in the 1909 Witthaus and Becker.

Commonwealth vs. Freeth, 5 Clark 455. Oyer & T. Philadelphia. (Apparently 1858.) Contains Judge Ludlow's charge to the jury to the effect that partial insanity not blinding the prisoner to what was right and wrong in respect to his murderous act, nor preventing his understanding the nature of his act, was not a defense in a prosecution for murder.

In this series, at volume 3 of Clark, at p. 188, is the celebrated opinion of King, P. J., in the Matter of the Communication of the Grand Jury in the Case of Lloyd and Carpenter, delivered October 4, 1845, in which the power of the Grand Jury received elaborate treatment, and which contains this warning by that great judge: "Any and every innovation in the ancient and settled usages

of the Common Law, calculated in any respect to weaken the barriers thrown around the liberty and security of the citizens, should be viewed with jealousy, and trusted with caution."

The cases in Clark proved so valuable, and the publication was so well received by the legal profession, that in 1851 two new enterprises issued, both of which proved fully as valuable as Clark. One of these was Brightly, the other was Parsons. The name of the first is Brightly's Reports of Cases decided by the Judges of the Supreme Court of Pennsylvania, in the Court of Nisi Prius, at Philadelphia, and also in the Supreme Court. With Notes and references to recent decisions. Philadelphia. 1851.

Many of the cases in Brightly had appeared in various law periodicals, but were so scattered as to be almost inaccessible. A republication of those cases, with others, was thought to be acceptable.

The period covered by this volume is 1809-1851. The Supreme Court decisions are given on pages 269-488. They number 23, and range in date from 1813 to 1851, both inclusive.

The first of the 23 Supreme Court Cases is Lockington's Case, decided in 1813, already mentioned in connection with Hall's American Law Journal. At pages 347-411, in a note, is given Magill vs. Brown, in the United States Circuit Court. in 1833, in which there is an elaborate study of charitable uses by Baldwin, J. The case is not elsewhere reported, it is believed, excepting in Federal Cases, and in 14 Hazard's Pennsylvania Register 305.

McDermond vs. Kennedy, (1839), p. 332, was of great importance some years later when it was recognized as decisive that there was no power in the City of Philadelphia to subscribe to certain railroad stock. See 8 Legal Intelligencer 94.

The other work which had birth in 1851 was Parsons' Select Cases in Equity, argued and determined in the Court of Common Pleas of the First Judicial District of Pennsylvania, from 1841 to 1850.

Volume 2 became extremely rare, the edition having been destroyed in 1852 in the great fire at Sixth and Chestnut Streets, whereat Mr. Haly, of Troubat & Haly's Practice, lost his life in an endeavor to save a friend's books. A copy brought as high as $68.00 at an action sale. This scarcity, and the great importance of the two volumes, led to their republication in 1888, with notes by Albert B. Weimer, the able law writer and reporter. The reprint, in volume 1, contains a table of 31 American and English cases in which infringements on the names of publications have been considered. Some of the notable cases reported are:

Dalzell vs. Crawford 37 (1842), wherein Judge King gave a definition often quoted, of marketable title.

Eckstein's Est., 59 (1842), wherein Judge King gives a learned and able review of the power of a committee of a lunatic.

Thomas vs. Ellmaker 98 (1844), asserting the charitable character of funds contributed by a voluntary unincorporated association of individuals who have contributed funds for a purely public purpose (a hose fire Company), and the control of equity thereover. Frequently cited for this.

Commissioners of Moyamensing vs. Long, 143 (1845), sustaining the jurisdiction of equity to restrain a public nuisance, but only where the right is clear and the injury threatened permanent or irreparable.

Bank of Kentucky vs. Schuylkill Bk., 180 (1846), is a prominent case on the power of the cashier to bind a bank, and is cited in Morse on Banking.

Holden's Administrators vs. McMakin 270 (1847) is a carefully considered case of goodwill of a newspaper.

Butler vs. Butler (1849), p. 328 is the celebrated divorce case defining cruelty.

Twells vs. Costen (1849), p. 378, Bill of discovery refused against a mere witness, by King, J. Cited in Fletcher's Equity Pleading & Practice Sec. 808.

Morris vs. Remington (1849), p. 387 is a leading case to the effect that there can be local as well as transitory proceedings, even in chancery; that a nuisance caused by the diversion of a water course requires a local remedy, and hence that a Philadelphia court will not injoin for such nuisance in another county. King, P. J., delivered one of his learned opinions. His decision is condemned by Gould on Waters Sec. 444; but is quoted in Farnham on Waters vol. 2, p. 1665, in Bispham's Equity, 8th ed., p. 73, and in Pomeroy's Equity Jurisdiction vol. 5, p. 32.

The Civil cases in vol. 2 of Parsons were carefully considered, but they were not of the notable character of those in vol. 1.

Vol. 2 contains also Select Cases in the Criminal Court and of Contested Elections, 1843-1851. The criminal cases in vol. 2 were given scholarly care, and they have been cited with frequency.

Commissioners vs. McClean, 2 Pars. 367 (1850), is a singular case of conspiracy to cause the arrest and conviction of a Philadelphian before the U. S. Court Martial in New York, as a deserter, in order to obtain a reward of $30 offered by Govt. for the arrest and safe delivery, of a deserter of the same name. The innocent man was convicted before the Court Martial, but this conviction was held not to be a bar to the prosecution for the conspiracy. This case is given especial mention, in Wharton on Criminal Law (10th. ed. 1896), Sec. 1377; and in sec. 1398 note 2 the opinion of Judge King is quoted, on convicting conspirators from a series of acts products of concerted action.

Election Cases in 2 Parsons are referred to in McCrary on Elections, at appropriate places in that work. A number of them are reported also in Brightly's Election Cases.

Brewster's Reports of Equity, Election and Other Important Cases Argued and Determined Principally in the Courts of the County of Philadelphia. These were published in four volumes, and the cases are from the years 1856-1873. This is a series of decided value. More than a third of the cases in volume 3 are Supreme Court cases, and a considerable number of such cases are in volume 4, besides some in volume 2. The series is important, too, for full reports of certain criminal trials, among which is the Twitchell murder case in volume 1. Some leading cases on the subject of evidence of marriage by proof of cohabitation, reputation, &c., are in volume 2. Among these is the celebrated Physick case, and that of Bicking's Appeal. Hohundro's Case may be mentioned because of its remarkable character. The marriage to a slave mistress

was sought to be proved by evidence of cohabitation, but the evidence, of course, was held insufficient. The case, however, is reported also in 66 Pa. 113. Volume 2 of Brewster contains also a couple of rather prominent trade name cases—Colton vs. Thomas and Ferguson vs. Davoli Mills. These are cited in Hopkins on Trade Marks, 2nd. ed.

An important decision in the law of trusts is found in Petition of the City of Philadelphia, Trustee under Girard's Will, 2 Brewster 462. The will authorized the trustees to lease mining lands, but under the restriction limiting them to five-year leases. The trustees found that this restriction prevented them from leasing, whereupon the Court authorized leases for terms of 15 years. This decision is cited with approbation in 2 Perry on Trusts, Section 529, 5th. ed.

The series Weekly Notes of Cases, contains 44 volumes. It reports very many Supreme and Superior Court cases, and also cases in the Philadelphia courts, besides cases in the Federal Courts for the Eastern District. This series began October 1, 1874, and continued to December, 1899. On September 17, 1874, a sample number, containing pages numbered I-IV and reporting notes of twelve cases was issued. The regular series does not contain these pages, but some of the subscribers bound them with their copies of volume one. An Index-Digest was published in 1899 covering volumes 1-42. This journal enjoyed for ten years a field free, to a certain extent, from much rivalry. The Supreme Court official reports did not report all cases until 1889. This left many cases to the care of the Weekly Notes. It was a care exercised in brilliant manner. The earlier numbers were "Notes," as the name indicates, but the journal was in able hands, and developed. Such was the respect gained by the Weekly Notes, that long after the Official reports presented every case, the journal mentioned continued to be taken by many lawyers, and this too despite the existence of the Central Reporter and of the Atlantic Reporter, both of which began in 1885. It is true that this periodical reported many cases in the Philadelphia Courts, but it's interest lay chiefly in its reports of the higher tribunals. One proof of its value is the number of times its cases are cited by the Supreme Court. For some time after the period of its publication, these were frequent; and even during the last ten years, from 197 Pa. St. to 225 Pa. State, they number 100. Sadler made his own reports of the Supreme Court cases that are in the Weekly Notes, as stated *ante* under Sadler.

With some qualifications as to tax cases, the statute law of Pennsylvania vests in the Common Pleas Courts jurisdiction of all Commonwealth Cases; and under this authority, the law officers of the State resort quite generally to the Common Pleas of Dauphin County in matters of taxation, corporations, elections. The general importance of the work of the Dauphin County Court is described in a mention by the Hon. Lyman D. Gilbert, of the work of Judge Pearson, one of the Judges of that Court. It is too long to recite here, but it may be read in 6 Dauphin County Reports 303. Pearson's Reports, then, in two volumes, and the present Dauphin County Reporter report the cases in the Dauphin Courts. Volume 1 of Pearson embraces the decisions of Judge Pearson in the Counties of Dauphin and Lebanon, from 1851 to 1868, and volume 2 those from 1868 to 1880.

The journal called "The Dauphin County Reports" began about 1898, but its earlier numbers contain not only current decisions but decisions as old, when thus reported, as fifteen years or more. This law periodical reports also the decisions of the heads of department of the State Government. It is now (1913) current in volume 16.

At considerable time and trouble, but with much benefit in the doing, some important cases have been noted in the foregoing pages. It was worth the doing; for we have the same courts with us to-day, and we may well rejoice in the thought that the present-day county judges are delivering opinions from time to time that will prove equally celebrated and important as were the decisions of the county judges of the past.

Let us listen to what was said of King, one of the Judges of Philadelphia County.

From Dr. Wharton's Criminal Law, Seventh Edition, Vol. III., pp. 8 and 9.

"He used such law [referring to adjudicated law], in the way in which it is best used, as one of the chief elements from which a wise and systematic jurisprudence can be made up; but he never used it as a mere arbitrary, inflexible rule, attaching to the words an authority which belongs to words only as taken in connection with the circumstances of the period in which they were uttered, and the contingencies of succeeding eras. Hence it is that in the fields to which his jurisdiction mainly directed him—Criminal Law, Equity and Ecclesiastical Law, viewing the latter in its English sense as embracing probate and matrimonial cases—his opinions are entitled to rank with those of the first jurists of this or any other land. Perhaps, in this treatise, which owes so much to his councils, given at the time of its first preparation, and which now reaches many readers, to whom Judge King's decisions are inaccessible, it may not be unfitting to record this notice of the great legal thinker, whose reputation there are so few other memorials to guard."

NOTE:—In another paper, at some future time the writer hopes to state the side reports of Pennsylvania not mentioned in this part. They constitute a more numerous and equally important series.